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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,410	11/12/2003	Jerry Joe Wolfe JR.	TRIPLE.000010	6794
43640 7590 02/25/2008 DILLON & YUDELL LLP 8911 NORTH CAPITAL OF TEXAS HWY SUITE 2110 AUSTIN, TX 78759				
EXAMINER				
SMITH, KIMBERLY S				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
02/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/706,410

**Applicant(s)**

WOLFE ET AL.

**Examiner**

Kimberly S. Smith

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 15-17, 19-21 and 24-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 15-17, 19-21, 24-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 13-39 have been considered but are moot in view of the new ground(s) of rejection.

***Information Disclosure Statement***

2. The information disclosure statement filed 11/19/07 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 24, the recitation that perimeter lip is for retaining a removable cap is inconsistent as such limitation is considered a functional recitation as claim 28 further limits the cap. The applicant should clarify whether the apparatus is directed to the subcombination of the treat ball alone or the combination of the treat ball and cap. The Examiner is considering the

claim to be a combination claim. Applicant should amend the claim accordingly (i.e. deleting "for" prior to "retaining a removable cap".)

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 13, 15, 17, 20, 21, 24, 26-32, 34, 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Shatoff et al., US 2004/0200434 (Shatoff).**

7. Shatoff discloses the invention as claimed per Figure 11, more particularly an apparatus comprising an outside surface with a first opening (660) providing access to a first space, an interior compartment defining a second space having a wall (666) separating the first and second space (i.e. the portion to the right in Figure 11 is defined as the first space, the portion to the left in Figure 11 is defined as the second space) and a third opening (668) and a removable cap (604) retained within the first space and at least partially blocking the second opening.

8. Re claims 15 and 26, Shatoff further discloses the first space is offset from a center location.

9. Re claims 17 and 37, Shatoff discloses a funnel section (i.e. the flaps).

10. Regarding claims 20, 29 and 38, Shatoff discloses the wall includes more than one flap.

11. Regarding claims 21, 28 and 39, Shatoff discloses the cap is generally domed shaped.

12. Regarding claims 24, 30 and 34, Shatoff discloses the apparatus has a lip at the perimeter of the first opening in which the removable cap is retained (within 653).
13. Regarding claim 31, Shatoff discloses the dimension of the first space along a plane containing the second opening is greater than a maximum dimension of the second opening.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claims 15, 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shatoff as applied to claims 13, 24 and 31 above and further in view of McEvoy, IE 82913 B3.**
16. Shatoff discloses the invention substantially as claimed. However, Shatoff does not disclose the use of sinuous edge. McEvoy teaches within the analogous art of balls, the use of a sinuous raised edge to augment the normal path of the apparatus. It would have been obvious to one having ordinary skill in the art at the time of the invention to use the sinuous raised edge as taught by McEvoy with the apparatus of Shatoff so as to augment the natural path so as to make a more enticing apparatus.
17. **Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shatoff as applied to claim 13 and 32 above, and further in view of Rucker, US 6,634,318.**

18. Shatoff discloses the invention substantially as claimed. However, Shatoff does not disclose the removable cap is edible. Rucker teaches within the same field of endeavor the use of a removable edible cap for closing an opening so as to contain the treats within the toy thereby increasing the enjoyment of the toy. It would have been obvious to one having ordinary skill in the art at the time of the invention to use the cap as taught by Rucker as the cap of Shatoff so as to provide a more enticing apparatus for the animal as the combination of familiar elements according to known techniques is likely to be obvious when it does no more than yield predictable results.

### *Conclusion*

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/  
Primary Examiner, Art Unit 3644

kss